

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BERNARDO MENDIA,

Plaintiff,

v.

JOHN M. GARCIA, et al.,

Defendants.

Case No. [10-cv-03910-MEJ](#)

ORDER TO SHOW CAUSE

The Court issued multiple orders requiring Plaintiff Bernardo Mendia (“Plaintiff”) to attend (1) a deposition Defendant the United States (“Defendant”) noticed for March 22, 2017 in San Francisco, California; (2) a Court-ordered, in-person meet and confer session on March 23, 2017; and (3) a hearing on Plaintiff’s Motion to Stay on March 23, 2017. Dkt. Nos. 203, 210, 220. Plaintiff failed to attend any of these proceedings. *See* Dkt. No. 221.

In addition, Defendant notified the Court Plaintiff did not comply with the Court’s prior orders to produce documents pertaining to his calculation of damages in accordance with Federal Rule of Civil Procedure 26(a)(1)(A)(iii). Dkt. No. 213; *see* Dkt. No. 203 ¶ 2; Dkt. No. 194 ¶¶ 1-2. On March 21, 2017, Plaintiff filed a response stating he “has provided [D]efendant . . . [with] ‘Plaintiff’s Preliminary Calculation of Damages Specific to Federal Tort Claims Act Claims’ which painstakingly details Plaintiff’s *preliminary* calculation of damages on the one claim that Plaintiff can provide a detailed calculation of damages. (ECF No. 215)[.]” Dkt. No. 216 (emphasis in original). This does not satisfy Plaintiff’s Rule 26 obligations. Plaintiff did not provide Defendant with this document prior to filing, i.e., six days after the Court-ordered deadline for production. *See* Dkt. No. 203. Moreover, Plaintiff’s Preliminary Calculation does not comply with Rule 26: Plaintiff states he “is unable to provide a preliminary calculation of

1 damages” for two of his three claims against Defendant, and he does not provide supporting
2 material for his sole computation. *See* Fed. R. Civ. P. 26(a)(1)(A)(iii) (“[T]he disclosing party . . .
3 must also make available for inspection and copying as under Rule 34 the documents or other
4 evidentiary material, unless privileged or protected from disclosure, on which each computation is
5 based, including materials bearing on the nature and extent of injuries suffered[.]”).

6 The Court previously warned Plaintiff that failure to comply with this Court’s orders may
7 result in sanctions. Dkt. No. 203 at 2; *see* Fed. R. Civ. P. 37(b)(2)(A)(v). The Court also warned
8 that “[i]f Plaintiff d[id] not attend his deposition, he w[ould] be responsible for paying the
9 reasonable fees and costs Defendants’ counsel have incurred in travelling to San Francisco.” Dkt.
10 No. 210.

11 Accordingly, the Court **ORDERS** Plaintiff to show cause why the Court should not
12 impose sanctions, including but not limited to, monetary penalties, striking his request for
13 damages, or dismissing his claims. Plaintiff shall respond no later than **March 30, 2017**. Also no
14 later than March 30, 2017, Defendant shall submit a declaration detailing the fees and costs
15 incurred in travelling to San Francisco to attend Plaintiff’s deposition. The Court shall hold a
16 show cause hearing on **April 27, 2017 at 10:00 a.m.** in Courtroom B, 450 Golden Gate Avenue,
17 San Francisco, California.

18 **IT IS SO ORDERED.**

19 Dated: March 23, 2017

20
21 
22 _____
23 MARIA-ELENA JAMES
24 United States Magistrate Judge
25
26
27
28